

Claim 29 of the present application is directed to a catheter for use in a system for intraluminal treatment of a selected site in a body of a patient by at least one treating element comprising *a hollow cylinder encapsulating a radioactive material*. As explained below, Ishiwara does not disclose or suggest such a catheter nor such a treating element.

In contrast to the catheter of Claim 29, Ishiwara is directed to a thermotherapeutic apparatus that has a coil-shaped RF electrode (10 in Figs. 1 and 2) which is coiled around a tube (8). See e.g. col. 3, lns. 28-35 in Ishiwara. The device is for transmitting RF (radio frequency) electromagnetic waves. See e.g. col. 4, lns. 26-27. There appears to be no disclosure or suggestion of a treating element which has radioactive material, or a treating element comprising a hollow cylinder encapsulating the radioactive material, as in independent Claims 29 and 30.

Accordingly, for at least the above-stated reasons, independent Claims 29 and 30 and the claims dependent thereon are clearly patentable over the cited reference. Therefore, it is respectfully requested that this rejection be withdrawn.

Double Patenting

The Examiner also rejects Claims 29-32 provisionally under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 29-35, 37, 42-44, 47-49 of application no. 09/486,496. This rejection is respectfully traversed.

Claims 29, 30, and 31 of the present application were originally filed in the '496 application as Claims 41, 45, 46, respectively (see Amendment C filed September 11, 2003 in the '496 application). The Examiner of the '496 application, however, stated that "Newly submitted claims 41, 45 and 46 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the claims are directed to a non-elected species. . . Accordingly,

claims 41, 45 and 46 are withdrawn from consideration as being directed to a non-elected invention." (see Office Action of December 2, 2003). As a result of that holding, Applicants filed the present application.

As the Examiner of the '496 application is the same as the Examiner of the present application, it is respectfully submitted that this objection is erroneous, and it is respectfully requested that it now be withdrawn. Applicants advised the Examiner of this point in the last response to an Office Action, but the Examiner has provided no reply thereto.

It is respectfully submitted that in light of the Examiner's original position that there is a separate invention in these claims, the Examiner is estopped from making this double patenting rejection, and it is requested that the rejection be withdrawn.

Conclusion

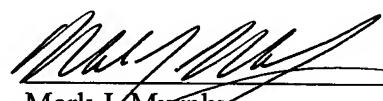
Therefore, for at least the above-stated reasons, the present application is in an allowable condition and should be allowed.

If any further fee is due for this amendment, please charge our deposit account 50/1039.

Favorable reconsideration is earnestly solicited.

Respectfully submitted,

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Mark J. Murphy
Registration No. 34,225

COOK, ALEX, MCFARRON, MANZO, CUMMINGS & MEHLER, LTD.
200 West Adams Street; Suite 2850
Chicago, Illinois 60606
(312)236-8500

Customer no. 000026568